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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3728-20**

LOIS SIMPSON,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,

Respondent-Respondent.

Argued November 2, 2022 – Decided February 3, 2023

Before Judges Haas and Gooden Brown.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of Treasury, PERS No. xx9695.

Timothy J. Prol argued the cause for appellant (Alterman & Associates, LLC, attorneys; Timothy J. Prol, on the briefs).

Matthew Melton, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant

Attorney General, of counsel; Matthew Melton, on the brief).

PER CURIAM

Lois Simpson appeals from the July 22, 2021 final agency decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS), rejecting the initial decision of an administrative law judge (ALJ). The ALJ found Simpson eligible for accidental disability retirement (ADR) benefits and reversed the Board's prior denial. For the reasons that follow, we reverse the Board.

I.

We glean these facts from the record. On September 27, 2017, then-sixty-three-year-old Lois Simpson, a former teacher's aide with the Garfield School District, applied for ADR benefits effective October 1, 2017. In the application, Simpson asserted that on December 1, 2015, she "tripped over [a student's] foot" and injured her back while at work. She stated that after undergoing "three surgeries," she "still live[d] in constant pain." An accident report dated December 1, 2015 memorialized the incident.

On March 27, 2018, Simpson was evaluated by Dr. Andrew Hutter, an orthopedic surgeon appointed by the Board. In his report, Hutter found that Simpson was "totally and permanently disabled" from performing her job duties

but opined that the disability "[was] not a direct result" of the December 1, 2015 injury. In a May 29, 2018 addendum, Hutter reported that his opinion "remain[ed] unchanged" after reviewing additional records of Simpson's treatment. The Medical Review Board agreed with Hutter, concluding that Simpson's disability "[was] associated with [and] accelerated by [a] pre-existing condition of lumbar spinal stenosis."

On July 19, 2018, the Board denied the application for accidental disability but granted Simpson ordinary disability benefits.¹ Specifically, the Board found that "the event that caused [the] reported disability [was] identifiable as to time and place," "undesigned and unexpected," "occurred during and as a result of [Simpson's] regular or assigned duties," and "[was] not the result of [Simpson's] willful negligence." However, the Board determined that "[a]lthough the event [was] caused by an external circumstance," the "reported disability [was] the result of a pre-existing disease alone or a pre-existing disease that [was] aggravated or accelerated by the work effort."

¹ The main difference between ordinary and accidental disability retirement "is that ordinary disability retirement need not have a work connection." Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008). "In addition, an accidental disability retirement entitles a member to receive a higher level of benefits than those provided under an ordinary disability retirement." Id. at 43 (citing Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 193 n.2 (2007)).

Simpson challenged the determination, and the Board transmitted the matter to the Office of Administrative Law (OAL) as a contested case.

As a result, an ALJ conducted Zoom hearings on November 6 and 17, 2020. At the OAL hearing, Simpson testified that on the morning of December 1, 2015, she was working with pre-kindergarten students when she tripped over a student's foot as she ran towards the front of the classroom to break up a fight. As she fell, Simpson grabbed a wheeled "display case" that rolled forward, causing her body to stretch before she landed on the floor. Although Simpson did not initially "feel that much pain," her knee and pinky were bruised from the fall. The same day, Simpson reported the fall to the school nurse, who treated Simpson's injuries with cold packs and ACE bandages, after which Simpson returned to the classroom.

Later in the day, Simpson began feeling "pain in [her] back." Simpson testified that she went to the doctor that afternoon because she was experiencing "a throbbing pain in [her] back" and "some pain . . . down [her] leg." The doctor diagnosed Simpson with "a lumbar sprain" and referred her for an MRI. Simpson subsequently underwent pain management treatment, which included physical therapy and multiple epidural injections. When the treatments failed to alleviate the pain, Simpson underwent three surgeries on her back. However,

neither the procedures nor continued physical therapy effectively addressed Simpson's pain.

Simpson testified that she reported to work at the school for the last time on December 21, 2015. She stated she was no longer able to do her job because of the pain. She applied for ADR benefits after receiving a September 14, 2017 letter from Garfield's Assistant Superintendent of Finance advising her that the school district could no longer offer her employment due to her medical restrictions. The letter also "strongly advise[d]" Simpson to investigate applying for disability retirement benefits.

Simpson acknowledged that prior to the December 1 injury, she had experienced back pain when she had previously fallen at work in 2012. Simpson testified that during the 2012 fall, she "was in the kitchen area" and "lean[ing] on a table" when "the leg [of the table] broke," causing her to "f[all] on [her] butt and . . . hurt [her] back." Simpson stated that as a result of that fall, she underwent "some physical therapy" and "was out of work for a tiny bit." However, when she returned to work, she "did [her] job with no problem." During her testimony, Simpson described her job duties as involving a myriad of "physical activit[ies]," including "carry[ing] heavy things," "changing [the] children if they wet themselves," sitting on the floor with the children, and

"play[ing on] the playground with the children." She further testified that she "loved [her] job" and would still be working were it not for the December 1 injury.

Dr. Arthur Becan,² who was qualified as an expert in orthopedic surgery, testified for Simpson. Becan conducted an independent medical evaluation of Simpson during which he physically examined Simpson, discussed her history, reviewed her medical records, and prepared a report and addendum memorializing his findings. In his opinion, to a reasonable degree of medical certainty, Simpson's disability was the direct result of her December 1, 2015 injury and subsequent complications from surgery.

Becan explained that Simpson was diagnosed with a lumbar sprain and radiculopathy³ following her fall, and she developed a herniated disc, which Becan described as "a localized extrusion of the disc pushing on the spinal cord to a significant amount." Becan stated that these injuries necessitated a three-level discectomy and spinal fusion surgery, which was conducted on August 1, 2016. According to Becan, Simpson's second and third surgeries, the last occurring on May 1, 2017, were necessitated by complications from the first

² Dr. Becan is also referred to in the record as Dr. Beacon.

³ Dr. Becan described radiculopathy as "[p]ressing on the nerve root."

surgery. Becan explained that as a result of "all the back surgery," Simpson had developed "epidural fibrosis," which he described as "an extensive amount of scar tissue around the spinal cord and nerve roots." Becan testified that "the [2015] fall, the initial surgery and then the complications that required two additional surgeries" led to Simpson's "present condition," which "[was] permanent in nature."

In discussing Simpson's pertinent medical history, Becan referred to an MRI of Simpson's lower back taken on January 12, 2016, which had been ordered by Dr. Steven Shamash, Simpson's first treating physician, and showed a herniated disc. According to Becan, there was "no record" of any disc herniation prior to the December 1, 2015 injury, and such a condition did not "develop out of the blue." Rather, Becan explained that "[n]inety[-]five percent of [all disc herniations were] due to trauma." Becan also addressed Simpson's previous 2012 work-related injury, which "was diagnosed simply as a sprain of the low back." He pointed out that Simpson had "continued working without any restrictions" after conservative treatment, and opined that "it was not a significant contributing factor to the problems she later developed [from] the 2015 accident."

Becan testified further that a 2013 MRI following the 2012 injury showed "mild to moderate spinal stenosis" in Simpson's lower back, "but no evidence of any kind of disc injury." Becan explained that "[s]tenosis is a term used to describe decreased space around the spinal cord of the nerve root" and maintained that there was "no way" to determine whether Simpson's stenosis was "congenital, degenerative, or due to a specific injury" such as the 2012 injury. Additionally, Becan observed that Simpson's stenosis was asymptomatic before 2015, and stated that people with stenosis "almost never" require the type of surgery Simpson had after her 2015 injury.

When asked whether he agreed that Simpson's disability was "not a direct result of the [2015] incident," but was instead "associated with and accelerated by the pre-existing condition of lumbar spinal stenosis," Becan responded:

Absolutely not. . . . [M]ost people with stenosis go their entire lives without having any significant back problems. However, when you have an injury like she had where she herniated a disc, it's going to have swelling and inflammation around the other areas where she had stenosis and started developing significant pressure on the nerve roots

Dr. Hutter was also qualified as an expert in orthopedics and testified for the Board consistent with his prior reports. During his testimony, Hutter reiterated that Simpson "was totally and permanently disabled from her job . . .

due to a progression of degenerative changes and that the injury of 2015 was not the primary cause of her disability, [but] just aggravated an underlying condition." According to Hutter, Simpson's 2015 fall "caused the soft tissue injury," but "[i]t did not cause her stenosis." In support, Hutter pointed to a report of Simpson's January 12, 2016 MRI that compared the 2013 and 2016 MRIs of Simpson's spine and noted "no change" in stenosis between the two films. However, Hutter's March 27, 2018 report, which was admitted into evidence alongside his May 29, 2018 addendum, indicated that a note from Dr. Shamash, dated January 19, 2016, stated that Simpson's "MRI demonstrated a disc herniation at L5-S1 with some pressure on the S1 nerve root and stenosis at L4-5."

Although Hutter maintained that the 2015 fall "exacerbated" Simpson's stenosis, he acknowledged that, absent the fall, there was no guarantee Simpson would ever have needed surgery to address her stenosis or that the normal progression of her stenosis would have "automatically" resulted in her disability. However, Hutter added, "if there was no underlying stenosis, it's unlikely that [Simpson] would [have been] disabled by an accident of th[is] nature. Most likely she would have sustained a lumbar sprain."

Hutter also addressed "the need for the surgery" performed by Dr. Carl Giordano, Simpson's treating orthopedic spine surgeon, and disputed that Simpson had experienced an acute disc injury in 2015 that necessitated surgery.

Hutter explained:

Herniated discs cause radicular pain, and from reviewing the records, [Simpson's] symptoms are mostly back pain. . . . If she had had an acute disc herniation from this injury, then you would have had a main complaint of pain radiating down the leg in that distribution of nerve, and I did not see that in the records that were presented, nor in the discussion of the need for the surgery by Dr. [Giordano] in the records that I reviewed.

Hutter's testimony in that regard was contradicted by his May 29, 2018 addendum, which stated that his review included a June 28, 2016 office note prepared by Dr. Giordano noting Simpson's "persistent right radicular symptoms." Additionally, Dr. Giordano's August 1, 2016 "Report of Operation," which Hutter also reviewed and relied upon, stated: "[Simpson] suffered injury at work [on] December 1, 2015[,] that led to her back pain radiating into her legs. She had no history of any significant symptoms similar to this prior to her work injury" (emphasis added).

Following the hearing, the ALJ filed an initial decision concluding that Simpson "ha[d] met her burden in demonstrating, by a preponderance of credible

evidence, that she [was] eligible to receive accidental disability benefits." The ALJ found that Simpson's disability was "substantially caused by the December 1, 2015 accident" and rejected the Board's denial of ADR benefits.

In rendering his decision, the ALJ applied the governing principles to his factual findings, which were based largely on his assessment of the credibility of the expert witnesses. In that regard, the ALJ found that although Dr. Hutter had "demonstrated impressive knowledge in the area," Dr. Becan's testimony was more persuasive "on th[e] issue of causation." Specifically, the ALJ reasoned that Dr. Hutter's "reluctance to answer direct questions and his diminishment of the severity of th[e 2015] accident affected his credibility." Additionally, the ALJ pointed out that "Dr. Hutter's opinion was largely affected by a record he reviewed by . . . Dr. Shamash, [w]ho compared MRIs from 2013 and 2016." But because Dr. Shamash did not testify and was not consulted by either expert, the ALJ decided to "give little or no weight to Dr. Shamash's records and less weight to an opinion which was based heavily upon it."

The Board subsequently rejected the ALJ's decision and "ma[de] additional findings of fact," ultimately concluding "that the objective medical evidence in [the] record establishe[d] that the stenosis was the significant or substantial contributing cause of . . . Simpson's disability, not the 2015 incident."

The Board disagreed that "Dr. Becan's medical opinion was more reliable than Dr. Hutter's," reasoning incorrectly that "Dr. Hutter formed his opinion based on the objective medical evidence in the record," while Dr. Becan "relied solely upon the subjective complaints of . . . Simpson." Additionally, contrary to Dr. Shamash's January 19, 2016 note, the Board emphasized that the "2016 MRI noted disc herniation, but no pressure on the nerves," and concluded that "Simpson's disabling pathology was directly caused by the pressure applied on her nerves by the stenosis, not the 2015 incident."

Furthermore, according to the Board, "the medical evidence in the record matche[d] the stenosis pathology" because "[s]tenosis causes back pain whereas a disc herniation would cause pain radiating down the leg." The Board also found Simpson's "herniated disc caused by the 2015 incident worsened the stenosis" and determined that "absent the stenosis, Simpson was unlikely to need surgery after the 2015 incident." In that regard, "the Board found that Dr. Giordano's operative reports fully support[ed] Dr. Hutter's conclusions."

Critically, the Board rejected the view that Simpson's stenosis was asymptomatic before 2015, pointing to the treatment she received following her 2012 injury. Additionally, the Board found that "the ALJ erred by not considering and affording proper weight [to] the objective MRI findings" based

on the ALJ's view that "they had been reviewed and compared to one another by Dr. Shamash, who did not testify." The Board explained that contrary to the ALJ's rationale, "hearsay [was] admissible in the OAL."

The Board observed that under N.J.S.A. 43:15A-43, a PERS member is eligible for ADR benefits only if the member is "permanently and totally disabled 'as a direct result of a traumatic event.'" Citing Gerba v. Board of Trustees of the Public Employees' Retirement System, 83 N.J. 174 (1980), the Board asserted that when a person's underlying condition is aggravated by a traumatic event, that person is only eligible for ordinary retirement benefits. According to the Board, this court's decision in Petrucelli v. Board of Trustees of the Public Employees' Retirement System, 211 N.J. Super. 280 (App. Div. 1986), established that "an asymptomatic preexisting condition can combine with a traumatic event to satisfy the 'direct result' requirement, but only where the preexisting condition is stable and 'might never cause any trouble.'" However, given the Board's view that Simpson's preexisting stenosis was symptomatic before 2015 "and that the incident exacerbated her symptoms," it found that the ALJ had misapplied the law. Accordingly, the Board rejected the ALJ's initial decision and denied Simpson ADR benefits. This appeal followed.

II.

We begin our analysis with the established principle that judicial review of an administrative agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "We recognize that agencies have 'expertise and superior knowledge . . . in their specialized fields.'" Hemsey v. Bd. of Trs., Police & Firemen's Ret. Sys., 198 N.J. 215, 223 (2009) (alteration in original) (quoting In re License Issued to Zahl, 186 N.J. 341, 353 (2006)). Therefore, we will not reverse an agency's decision "'unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" J.K. v. N.J. State Parole Bd., 247 N.J. 120, 135 (2021) (quoting Saccone v. Bd. of Trs. of the Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014)).

To determine whether an administrative agency action is arbitrary, capricious, or unreasonable, a reviewing court must assess:

- (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
- (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting Stallworth, 208 N.J. at 194).]

"The burden of proving that an agency action is arbitrary, capricious, or unreasonable is on the challenger." Parsells v. Bd. of Educ., 472 N.J. Super. 369, 376 (App. Div. 2022).

While we will not "'substitute [our] own judgment for the agency's,'" Allstars Auto Grp., Inc., 234 N.J. at 158 (quoting Stallworth, 208 N.J. at 194), we are not "'bound by an agency's interpretation of a statute or its determination of a strictly legal issue,' particularly when 'that interpretation is inaccurate or contrary to legislative objectives.'" Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 418-19 (2018) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). Nevertheless, "we defer to [agency] fact[-]findings that are supported by sufficient credible evidence in the record." McClain v. Bd. of Rev., Dep't of Lab., 237 N.J. 445, 456 (2019); see also Quigley v. Bd. of Trs. of the Pub. Emps.' Ret. Sys., 231 N.J. Super. 211, 220 (App. Div. 1989) ("In considering the appeal from the decision of the Board of Trustees, we are cognizant that we are reviewing its findings and not those of the administrative law judge.").

Before turning to Simpson's specific arguments, we note the relevant statute and case law that control this matter. N.J.S.A. 43:15A-43(a) provides that PERS members are eligible for ADR benefits if they are "permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of [their] regular or assigned duties." In Gerba, our Supreme Court interpreted the statute's "direct result" language to determine whether a member whose "disability was caused by traumatic physical injury combined with a preexisting . . . condition" was eligible for ADR benefits. 83 N.J. at 176. First, the Court observed that "[w]here there exists an underlying condition such as osteoarthritis which itself has not been directly caused, but is only aggravated or ignited, by the trauma, then the resulting disability is, in statutory parlance, 'ordinary' rather than 'accidental' and gives rise to 'ordinary' pension benefits." Id. at 186. However, the Court also concluded that, in certain circumstances, a disability caused by a traumatic injury and a related underlying condition would qualify a member for ADR benefits. Id. at 186-87.

In that regard, the Court explained:

[A]n accidental disability in some circumstances may arise even though an employee is afflicted with an underlying physical disease bearing causally upon the resulting disability. In such cases, the traumatic event need not be the sole or exclusive cause of the disability. As long as the traumatic event is the direct cause, i.e.,

the essential significant or substantial contributing cause of the disability, it is sufficient to satisfy the statutory standard of an accidental disability even though it acts in combination with an underlying physical disease.

[Id. at 187 (third emphasis added).]

In Petrucelli, we applied Gerba's "direct result" analysis in a case involving a member who developed disabling back problems after falling face-first down a stairwell during an on-site inspection of a treatment facility performed in the course of his employment with the State. 211 N.J. Super. at 282-83. Medical scans of the member's back revealed the presence of spondylolisthesis, "a [spinal] structural anomaly," and arthritis. Id. at 285. Although it was undisputed that the member's back conditions were asymptomatic before the fall, the Board denied him ADR benefits after concluding his disability was caused by preexisting conditions. Id. at 285-86.

In reversing the Board's determination, we explained:

[W]ithout this accident, [the claimant] could have worked to age [sixty-two], as planned, and retired uneventfully. The State's doctor conceded this. Whether he would have developed low-back symptoms independently of the . . . fall, and when he would have done so, is entirely speculative on this record. We are satisfied that if claimant here cannot recover after a severe trauma, superimposed on a non[-]symptomatic structural anomaly, which triggered a symptom complex resulting in total disability, no claimant could

ever recover accidental benefits in any circumstance where there exists a quiescent underlying condition which had caused no trouble and might never cause any trouble. We conclude that such a narrow and crabbed "directness" test was never intended by the Legislature nor condoned by the Supreme Court in Gerba.

[Id. at 289.]

In Richardson, our Supreme Court acknowledged its ADR jurisprudence was "in need of a course correction" because its prior rulings had led to a series of "inconsistent decisions" regarding the traumatic event standard. 192 N.J. at 209-210. To illustrate its point, the Court organized its prior decisions into "two distinct strands." Id. at 211. The first strand "reaffirm[ed] that a traumatic event can occur during usual work effort, but that work effort itself or combined with pre-existing disease cannot be the traumatic event." Ibid. The second strand "narrow[ed] what qualifies as a traumatic event to only those cases involving an extreme amount of force or violence." Ibid. After examining both strands, the Court concluded that the former, to which Gerba belonged, represented the correct interpretation of legislative intent. Id. at 212.

The Court further described the holdings from the Gerba strand of cases as follows:

That strand . . . declares that, where the disability arises out of a combination of pre-existing disease and work effort, a traumatic event has not occurred; underscores

that what is required is a force or cause external to the worker (not pre-existing disease) that directly results in injury; and identifies ordinary mishaps, including lacerations, trips, and falls, as traumatic events.

[Id. at 211 (emphasis omitted).]

The Court declared that under its "shifted paradigm, a traumatic event is essentially the same as what we historically understood an accident to be-an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort." Id. at 212. Accordingly, to obtain ADR benefits, the Richardson Court announced that a member must prove the following:

1. that he is permanently and totally disabled;
2. as a direct result of a traumatic event that is
 - a. identifiable as to time and place,
 - b. undesigned and unexpected, and
 - c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
4. that the disability was not the result of the member's willful negligence; and

5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

[Id. at 212-13.]

Here, the only disputed issue is whether the 2015 injury was "the essential significant or substantial contributing cause of the disability," Gerba, 83 N.J. at 187, or whether the disability "was related to . . . pre-existing conditions," Petrucelli, 211 N.J. Super. at 285. Simpson argues that the Board's decision is not supported by the record or the law because her 2015 injury was the substantial contributing cause of her disability, and "the mere existence of pre-existing pathology is an insufficient basis to deny" ADR benefits. The Board counters that "Simpson did not sustain her burden on the direct result requirement, where her disability was substantially the result of pre-existing stenosis."

The Board's finding that Simpson's stenosis was symptomatic before her 2015 injury was essential to its determination that Petrucelli did not apply and that Simpson's disability was not the "direct result" of her 2015 fall. However, that finding is not supported by the record. Dr. Hutter never stated during his testimony or in his reports that Simpson's stenosis was symptomatic before 2015. In fact, Hutter testified that Simpson apparently recovered from the 2012

injury. Also, none of the medical reports in the record indicate that the stenosis was symptomatic before 2015. On the contrary, Dr. Giordano's August 1, 2016 Report of Operation stated: "[Simpson] suffered injury at work [on] December 1, 2015 that led to her back pain radiating into her legs. She had no history of any significant symptoms similar to this prior to her work injury" (emphasis added).

Given that the Board's finding in this regard is contradicted by the record, and in light of Dr. Hutter's testimony that Simpson may never have needed surgery absent the fall, the Board's decision to deny Simpson ADR benefits "lacks fair support in the record." J.K., 247 N.J. at 135 (quoting Saccone, 219 N.J. at 380). Guided by Petrucelli and the undisputed record, we are satisfied that Simpson established she was asymptomatic prior to the 2015 injury and that the 2015 fall was the direct cause of her disability, even though it acted in combination with her underlying stenosis.

Simpson further argues the Board's action was arbitrary, capricious, and unreasonable because the Board "disregarded the fact-finding and credibility determinations made by the ALJ, and substituted vapid inanity for the actual facts in this matter."

N.J.S.A. 52:14B-10(c) provides that an

agency head may not reject or modify [an ALJ's] findings of fact as to issues of credibility of lay witness testimony unless it is first determined . . . that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.

See H.K. v. Dep't of Hum. Servs., 184 N.J. 367, 384-85 (2005) (criticizing an agency head for rejecting an ALJ's credibility determinations of lay witnesses); Cavalieri v. Bd. of Trs. of the Pub. Emps. Ret. Sys., 368 N.J. Super. 527, 533-34 (App. Div. 2004) ("[T]he Pension Board could not reverse an ALJ's factual finding based upon the credibility of a lay witness without demonstrating that the ALJ's findings were 'arbitrary, capricious or unreasonable or . . . not supported by sufficient, competent, and credible evidence in the record.'" (second alteration in original) (quoting N.J.S.A. 52:14B-10(c))). However, N.J.S.A. 52:14B-10(c) does not apply to the agency head's rejection of an ALJ's credibility assessment of expert witnesses, only lay witnesses. ZRB, LLC v. N.J. Dep't of Env't Prot., 403 N.J. Super. 531, 561 (App. Div. 2008).

Here, the Board explained that it rejected the ALJ's credibility assessment of Dr. Hutter's expert testimony partly because the ALJ discredited Hutter's reliance on Dr. Shamash's records due to Dr. Shamash not having testified at the hearing. The Board's criticism of the ALJ on that basis was reasonable because both Dr. Hutter and Dr. Becan necessarily based their opinions, in part, on their

respective reviews of Simpson's treating physicians' records, and none of those physicians testified at the hearing. As such, it was unreasonable for the ALJ to discredit Dr. Hutter, but not Dr. Becan, on this ground.

However, the Board also found Dr. Becan less reliable than Dr. Hutter because it determined Becan "relied solely upon the subjective complaints of . . . Simpson." That finding is not supported by the record. Indeed, like Hutter's, Becan's testimony was based on his physical examination of Simpson as well as his discussion of her history and his review of her medical records. In fact, Dr. Hutter expressly endorsed this approach, stating that "[y]ou have to . . . take the findings on the diagnostic study and correlate [them] with your physical examination and the subjective complaints that the individual has."

In sum, we reverse the Board's decision denying Simpson ADR benefits because, like the ALJ, "we conclude that the 'direct result' test was legally satisfied" by Simpson's proofs. Petrucelli, 211 N.J. Super. at 289. The Board's critical finding that Simpson's stenosis was symptomatic before her fall in 2015 is not supported by the record, and the Board erroneously rejected Dr. Becan's testimony based on a misapprehension that he "relied solely upon the subjective complaints of . . . Simpson" when offering his opinion that her 2015 injury was the substantial contributing cause of her disability. "[A]n accidental disability

may under certain circumstances involve a combination of both traumatic and pathological origins." Korelnia v. Bd. of Trs. of the Pub. Emps.' Ret. Sys., 83 N.J. 163, 170 (1980) (citing Cattani v. Bd. of Trs., Police & Firemen's Ret. Sys., 69 N.J. 578, 586 (1976)). Such circumstances existed here and justified an award of ADR benefits.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION